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CHARACTERISTICS OF THE ISLAMIC STATE

MOHAMMAD HASHIM KAMALI

INTRODUCTION

Despite the absence of a clear mandate in the sources of Islam as to the definition and attributes of an Islamic State, the view has prevailed among the '*ulamā*' that Islam does propose a political order, that Islam is both a religion and state and that these two aspects of Islam cannot be meaningfully separated from each other. Some of the evidence provided in support of this view is not directly related and is, perhaps, inconclusive, but is not devoid of force. Although the Prophet (peace be upon him) did not appoint or nominate a successor to lead the community, neither did he give clear instruction as to the formation of a state, he was, nevertheless, the head a state himself and left behind, in his capacity both as Messenger of Allah and as political leader, a legacy of verbal and practical instruction which the '*ulamā*' have relied upon in expounding the basic attributes of political authority in Islam. The precedent of the Rightly-guided Caliphs in state affairs has facilitated further the elaboration of the same theme. This essay does not propose discussing the polemics of whether Islam is a religion only or both religion and state, but investigates, in broad outline, some of the basic attributes of an Islamic polity.

This is not to deny, however, the controversial nature of the continuing debate concerning the Islamic State. Ever since the proposed establishment of such a state in Pakistan and elsewhere, scholars have continued to differ on the nature and attributes of this proposition. But many have envisaged the state as a logical extension of Islam and an instrument with which to facilitate implementation of its *Sharī'ah*. This is in fact the centre-piece of the whole argument in favour of establishing an Islamic state: Islam brought with it a legal system, the *Sharī'ah*, it is only logical to say that Islam also proposes a government to enforce it.

Any government that is committed to enforcing the law of Islam, as

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this discussion will elaborate, is Islamic. Supportive arguments for this theme are also found in the Qur'ānic concepts of *ummah,* and its vicegerency or *khilāfah,* commanding good and forbidding evil, and the Qur'ānic requirement of administering justice. The concept of *khilāfah,* that is the vicegerency of man, is by its nature rooted in the concept of trust (*amānah*) which is also a Qur'ānic principle and an attribute of political leadership in Islam. The basic unity of religion and state in Islam represents a logical extension of *tawḥīd,* the oneness of Allah, which is a cardinal principle of the faith and a main feature of Islam's unitarian outlook on life.

The constitutional theory of Islam revolves around these concepts, namely *ummah, Sharī'ah, khilāfah, shūrā* (consultation) and *bay'ah* (pledge of allegiance). This essay shall discuss some of these concepts and then attempt a general characterization of an Islamic polity. The Islamic state is thus characterized as egalitarian which advocates simplicity and closeness to the populace; it is a welfare state with a centralised structure of authority, whose powers are, however, limited by reference to the *Sharī'ah.* It is also representative government which is accountable to the people. The Islamic state is not a theocracy, it is a civilian state which is neither sacred nor divinely ordained. These are some of the themes that I elaborate, but I should add that my attempt here at characterising the Islamic state is not exhaustive. For a more elaborate discussion on the characteristic features of an Islamic state, I refer the reader to a recent essay I have published on the subject.[1] I therefore propose to be brief on the themes I have addressed in that paper.

UMMAH AND THE STATE

Being the Arabic word for community, *ummah* is a derivative of *umm* meaning mother. *Ummah* in Islam, however, signifies more than the motherland. *Ummat al-Islām* comprises the entire collectivity of Muslims living anywhere regardless of their geographical boundaries. It is a Qur'ānic concept which was applied to the then nascent Islamic community of Madinah. But in its pre-Islamic usage the term *ummah* was indistinguishable from such of its other equivalents as *qawm, millah, dīn, ṭarīqah, jamā'ah* and *sha'b.* It seems that in the earlier Makkan *sūrah*s the word is used synonymously with all these terms in a rather loose sense, but gradually in the later Madinan period, *ummah* and its other equivalents acquired specific meanings in the Qur'ān.[2] But even so, *ummah* carries a multitude of implications in the Qur'ān where it is used to mean any community, people, time/era, pattern, method, and, of course, the Muslim community.[3] The Qur'ān highlighted some of the attributes of *ummah* as being belief in the truth of Islam,

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dedication to righteousness (by commanding good and forbidding evil), moderation and justice, and a single fraternity of equals.[4] Pre-Islamic Arabia did not know or use *ummah* in the sense of unity in belief above all other forms of unity. Tribe was the all-pervasive form of social organisation. Pre-Islamic Arabia was afflicted with moral, social and economic malaise and was, therefore, impressed by the morally appealing and egalitarian call of the new *ummah*.[5]

After the emergence of the state of Madinah, *ummah* signified both religious and political unity under the leadership of the Prophet. The theological *ummah* of the Prophet was then transformed into a state and following the demise of the Blessed Prophet, *khilāfah* became the political vehicle of this unity. *Ummah* and *khilāfah* were gradually integrated and became inseparable. The Prophetic *ḥadīth*, "my *ummah* will never agree on an error", enabled the jurists to declare the general consensus (*ijmā'*) of the *ummah* as the infalliable source of Islamic law, and *ummah* as the main bastion of its legislative authority. This authority was historically exercised by the *'ulamā'*. Although the head of state and ministers could occasionally issue edicts, these were more like executive orders than laws which had to conform, in order to be accepted, to the rules of *Sharī'ah* that were developed by the *'ulamā'*. *Ummah* differed from any other preceding or succeeding community in one sense: it was an open-ended community under one universal God. This simply meant the creation, for the first time in human history, of a universal community based on complete equality, regardless of considerations of race, colour and ancestry.[6] Islam became not only a religion but a unifying social bond. The Prophet's declaration "that there is no merit of an Arab over a non-Arab or of a red over a black except through piety" highlighted Islam's single-minded commitment to equality.[7]

The constitution of Madinah was evidently designed so as to endorse to unity of the new *ummah*, which was defined in its very first article to consist of "the believers and Muslims of Quraysh and Yathrib and those who followed them and are attached to them. They are a single community (*ummah wāḥidah*) distinct from other people."[8] Here the Emigrants (*Muhāji rūn*) and Helpers (*Anṣār*) were declared a single community because they believed in one God and in His Messenger, Muhammad. This was clearly an ideological unity and in this sense the Muslims were distinct from the pagans and Jews of Madinah. In the latter part of this document, which was probably a subsequent addition to the original agreement, we note a significant change in the composition of *ummah*. It was thus provided, in Article 25, that "the Jews of Banu 'Awf are a community (*ummah*) along with the believers. To the Jews their religion (*dīn*) and to the Muslims their religion." Here we note the formation of a political *ummah* which comprised the Jews of Madinah side by side with the ideological *ummah* of Islam. Neither was

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intended to overrule or replace the other but to co-exist in peace and harmony as fellow citizens of Madinah. The political *ummah* so created was not only a defensive alliance against external threat, but a substantive unity of Muslims and non-Muslims whose respective rights and obligations were spelled out in the constitution of Madinah. To recapture the contemporary meaning of the Madinan model, as Anwar Ibrahim has rightly observed, would necessitate that Muslims not only respect the *ummah* of other people but also "engage with other people, nations, world-views, religions and ideologies to work for a set of moral objectives that we can and must define together".[9]

The unity that Islam proposed was meant to be for all, that is, the whole of mankind. Lacking the claim or notion of a chosen race, the door of the community has been open to welcome all varieties of ethnic and cultural groups. Furthermore, until the onset of rapid decline under the Turkish rule, the Muslims throughout their territorial expansion dealt with the people of the new territories, not as subjects but as citizens. This was changed, however, under the Ottoman Turks whose discriminatory practices often degraded the citizens to second class subjects. It marked the first phase of decline. The second phase came with European colonialism which eventually dismembered the Muslim community. Only in recent decades there has been a renewed awareness among Muslims who envisage their strength through unity. It seems that the *ummah* still offers that potential and continues to inspire Muslims to strive towards that goal.

The *ummah* may be distinguished from *Dār al-Islām* in that the first is centred on unity in moral values and faith and therefore is non-territorial, whereas the second contemplates the legal and political dimensions of a sovereign state with its territorial boundaries, population and government. But residence is not a prerequisite of belonging to the *ummah*. The division between *Dār al-Islām* and *Dār al-Kufr,* and the subdivision of the latter into *Dār al-Ḥarb* (abode of war) and *Dār al-'Ahd* (abode of treaty) was politically conceived and became the focus of juristic writings despite the absence of any such division in the Qur'ān or the *Sunnah.* There is, on the contrary, a clear recognition in these sources of other religions and their followers, the *ahl al-kitāb*. In theory, *Dār al-Islām,* which is a parallel concept to *dawlat al-Islām* (Islamic state) comprises all territories where the *Sharī'ah* is implemented regardless of the religious following of their inhabitants.[10]

A certain diversity in the meaning of *ummah* can also be seen in the works of Muslim thinkers and *'ulamā'*. Al-Fārābī (*d.* 330/950), for instance, related *ummah* to the city and also used it in reference to such other communities as Abyssinians, Indians, Persians and Syrians. Then he distinguished the *ummah,* as a group, from *millah,* the latter implying a set of principles and values which rules the life of a certain community. Al-Māwardī (*d.*

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450/1059) used *ummah* and *millah* interchangeably while laying emphasis on its political unity under *khilāfah*. Al-Shahristānī (*d.* 532/1153), who produced a treatise entitled *al-Milal wa'l-Niḥal*, distinguished between *ummah* and *millah*, on the one hand, and used *niḥlah* in reference to unorthodox sects. And, lastly, we find that Ibn Khaldūn (*d.* 785/1406) spoke of the Muslim community mainly as *millah* rather than *ummah*, for the meaning of the latter to him was related to such other factors as ethnicity and homeland (*waṭan*).[11]

Ummah is a Qur'ānic concept but state, or *dawlah*, is not. The word *dawhah* occurs in the Qur'ān only in the sense of "circulation or making a circuit" when it is stated that wealth should not be circulated among the wealthy alone (59:9). This usage of *dawlah* seems to be unrelated to the subsequent and now dominant usage of the word except, perhaps, in the sense of rotation or devolution (of power from one regime to another). But this would signify an attribute, rather than meaning, of '*dawlah*'. The nearest equivalent words that are found in the holy book are *amr* and *ḥukm* which signify a command, or a network of commands.[12] The nation-state or *dawlah* that currently prevails is, of course, a Western concept representing a European phenomenon that developed between the sixteenth and seventeenth centuries. It is natural, therefore, not to find such a concept in the early writings of '*ulamā*'. Besides the *ummah* of Islam, and nationalism (and its outgrowth, the nation-state), are altogether different propositions. While nationalism is rooted in such bases of unity as race, language, history and culture, these are not the determinants of unity in *ummah*. If the concept of state in Europe cannot be understood in isolation from law, liberty and individualism, the Islamic concept of state cannot be understood in isolation from *ummah* and *Sharī'ah*.[13] It, thus, appears that state in Islam is neither normative nor the original locus of political authority. It is perceived as a vehicle of achieving order and security in the *ummah*, and implementing the basic mission of Islam, that is *amr bi'l ma'rūf wa nahy 'an al-munkar* (commanding good and forbidding evil). It is the *ummah*, not the state, which is the locus of political authority and the principal audience of the Qur'ānic trust of vicegerency.[14]

The norm in the constitutional theory of caliphate is unity, not pluralism. This is stated in the writings of al-Māwardī and others who maintained it to be unlawful to elect more than one *Imāms* at the same time.[15] Only al-Baghdādī (*d.* 403/1012) has gone on record to say that electing more than one *Imāms* is permissible if the localities in which they are elected are divided by sea. Al-Juwaynī has merely stated that plurality may be justified in the event of a great expansion of the territorial domain of Islam.[16] Ibn Ḥazm has, on the other hand, considered both these opinions to be erroneous and disagreeable to the unitarian character of the *khilāfah*.[17] Plurality of

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states in the Muslim lands was thus considered anomalous to the unitarian foundation of the *ummah*, and its political unity under *khalīfah*.[18]

Political unity in one form or another is, of course, desirable for the *ummah*, but as Manzooruddin Ahmed has affirmed "it is not an essential condition for its continued existence".[19] Ahmed concurs with Ibn Taymiyyah and others in saying that the *ummah* is not bound by the historical *khilāfah* and remains absolutely free to devise new forms of political unity as it deems necessary and appropriate.[20]

Abd al-Razzaq Al-Sanhuri has observed in his thesis, entitled *le Califat* (lyon, 1926), that the *khilāfah* could be reorganised on the model of the League of Nations in which modern states could participate as equal partners. The normative *khilāfah* (*al-khilāfah al-ṣaḥiḥah*, or *al-khilāfah al-rāshidah*) according to al-Sanhurī is premised on a unified and centralised political authority which is manifested in the person of the caliph. The plurality of caliphs and states that came into being in the course of history reflected a departure from the norm. Al-Sanhuri refers to this as caliphate by default (*khilāfah nāqiṣah*).[21] It is then added that unity is not an inflexible rule. If the realities of socio-political change in the Muslim world requires adjustment, "We must not hesitate in making it. What is important is that unity must be preserved and it must not be neglected. As to the form that unity might take, this is a matter which should be determined in light of the prevailing circumstances."[22] We note further that Muhammad Iqbal envisaged *ummah* as a diversity within unity where he observed: "It seems to me that God is slowly bringing home to us the truth that Islam is neither Nationalism nor Imperialism but a League of Nations which recognises artificial boundaries and racial distinctions for facility of reference only, and not for restricting the social horizon of its members."[23] Anwar Ibrahim seems equally convinced that as "concept and practice, the *ummah* in history provides a demostration of diversity within unity". The concept of *ummah* in history to Anwar Ibrahim means not only pluralism within the domain of the Muslim world, and within the confines of a common profession but also "a universalist outlook that provides the means for existing within a genuinely pluralistic world".[24] Our examination of the Qur'ān and the *Sunnah* and new perspectives in the history of ideas confirm that *ummah* is neither as closed and exclusive as some have seen it to be nor is it static. It is rather a dynamic concept which is in many ways open to evolution, adaptability and change. Political unity is not a reality at present but the historical model of caliphate may inspire unity in a modified form of either a confederation, a league of nations or a looser unity of a commanwealth of independent countries. Indeed, the *ummah* of every generation must select and define the form of unity in which their common loyalty to the moral and religions values of Islam can find expression.[25]

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THE *SHARĪ'AH*

Sharī'ah consists of a set of principles on morality, dogma, as well as practical legal rules, which are contained in the Qur'ān and the *Sunnah*. The clear injunctions (*nuṣūṣ*), of the Qur'ān and the *Sunnah* represent the binding corpus of the *Sharī'ah* and it is the main duty of state in Islam to enforce them.[26] The state is a necessity in Islam if only for this purpose. Muhammad Asad has observed that "the real eternal *Sharī'ah*" consists of commands and prohibitions expressed in self-evident terms in the Qur'ān and the *Sunnah*. It is concise, clearly conveyed and relatively small in volume, and it does not, nor was it ever intended to, provide detailed legislation for every contingency of life.[27] We need to add to this that the Qur'ān and the *Sunnah* also provide a set of broad and general principles which constitute the substance of what is described as the *maqāsid al-Sharī'ah*, that is, the philosophy and objectives of *Sharī'ah*, which are timeless and comprehensive. The concrete injunctions and the broad principles of the Qur'ān and the *Sunnah* embody the real eternal *Sharī'ah*. The detailed, supplementary and additional legislation is provided through the exercise of *ijtihād*, that is independent reasoning which is in consonance with the spirit and principles of Islam and aims at the realisation of *maṣlaḥah* (benefit) of the people.

Protecting the faith and implementing the law of Islam is a *raison d'etre* of *ummah*, as we read, to this effect, in the Qur'ān:

> You are the best *ummah* created for mankind. You command good and you forbid evil and you believe in Allah. (3:110)

Commanding good and forbidding evil here means implementing the *Sharī'ah* in the first place although the scope of this Qur'ānic concept, also known as *ḥisbah*, is wider than the *Shari'ah*. The latter part of the text explains its earlier segment as to why Allah has meant it to be the best *ummah*.[28]

In response to the question as to the position of Islamic law in Egypt, the Egyptian scholar, Muhammad Yusuf Musa, writing in the early 1950s, has stated the following: we are entitled to demand that the *Sharī'ah* be the principal source of legislation. The Egyptian nation and its legal order has suffered intellectual colonialism and domination in the hands especially of the French. It is now time to leave that behind and return to our own heritage. We ought to encourage, Musa continued, Specialised Studies of *Sharī'ah* and *fiqh* in our universities. We also need to adapt the *fiqh* to changing conditions: for it is unrealistic to expect solutions to new issues to be found in the works of the *'ulamā'* of the past who were not faced with these issues. Musa refers, in support of his views, to 'Abd al-Razzaq al-Sanhuri who has given a positive appraisal of the value and resourcefulness

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of the legal heritage of Islam and its capacity at adaptation.[29]

The Qur'ān, being the main source of *Sharī'ah*, does not embody a constitution as it does not address constitutional themes on the devolution and transfer of power and other matters of state. It is rather a source whose guidance need to be reflected in the state activity and legislation.[30] Yusuf Musa has thus rightly suggested that the *Sharī'ah* should be designated as the principal source of legislation. The constitution of Egypt of 1973 had in fact adopted a provision to that effect which was amended, in 1980, to designate *Sharī'ah* as "the" instead of "a" principal source of legislation. We also find similar provisions in the applied constitutions of many contemporary Islamic countries.

TRUST OF VICEGERENCY (*KHILĀFAH*)

Khilāfah has two meanings, one of which is Qur'ānic and refers to the vicegerency of man as the trustee of Allah on the earth. *Khilāfah* also refers to the institution of caliphate which was established under the Rightly-guided Caliphs and continued down the centuries until the abolition of Ottoman Caliphate in Turkey in the early 1920s. Initially, Abū Bakr and 'Umar ibn al-Khaṭṭāb laid emphasis on legitimacy by resorting to *shūrā* (consultation), *'aqd* (contract between the ruler and the ruled), and *bay'ah* (oath of allegiance).[31] This method was used in the appointment of their successor 'Uthmān, and the juristic elaboration of caliphate continued to emphasise *bay'ah* and *shūrā* notwithstanding the fact that they were largely overlooked with the onset of a hereditary monarchy under the Ummayyads. The classical writings of al-Māwardī, Abū Ya'lā al-Farrā, and Ibn Ḥazm are mainly concerned with the election, qualifications and duties of the caliph. The theory of caliphate also discusses the rights of the caliph and the citizen's duty of obedience to him. It speaks little of public or political rights, and discussion of the basic rights of individual is scanty and incidental. It is also not unexpected to find that none of these works contain a separate chapter on fundamental rights of the citizen,[32] in the manner as we now find to be one of the main features of modern constitutional law. This is of course notwithstanding the evidence that can be found in the Qur'ān and Sunnah on such themes as the dignity of man, sanctity of his life and property, justice, equality and so forth, subjects which could well provide the basis of a theory of fundamental rights.

The majority of *'ulamā'* have held that electing an *Imām* is *wājib* (obligatory) by virtue of the *ijmā'* (general consensus) of Companions and the succeding generations of Muslims across the centuries. When the Blessed Prophet breathed his last, the companions considered electing a leader a

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matter of urgency, even greater then attending to the burial of the deceased Prophet.[33] But of course to say that there must be a leader and that this is an Islamic obligation is not the same as saying that political leadership must be in conformity with a particular model.

The idea has prevailed among Muslims that there could be but one form of Islamic state, namely the form manifested under the Rightly-guided Caliphs. This is a common error. The truth is that Islam does not require conformity to any particular form. There is not only one form of Islamic state but many, and it is for the Muslims of every period to discover the form most suitable for their needs.[34] There is nothing in the *Shar.ah* to specify a particular type of political organisation. *Khilāfah* and *imāmah* have developed certain characteristic attributes which are generally seen to manifest the Islamic perception of political leadership. But this is mainly a result of the interplay of juristic doctrine and historical precedent which do not constitute an obligation under the *Sharī'ah*.[35]

MY RESPONSE TO JAAFAR SHEIK IDRIS

I take this opportunity to briefly comment on a recent article by Professor Jaafar Sheikh Idris entitled "Is Man the Vicegerent of God?"[36] in which the author has argued that *khilāfah* in the sense of vicegerency of man does not find support in the works of early Qur'ān commentators, who have understood the word *Khulafā'* merely to mean successors who have ruled and inhabited the earth one after another. The author has singled out Ibn al-'Arabī who was the first to read this new meaning (i.e. the vicegerency of man) into the Qur'ānic usage of the word *khalīfah*, which was subsequently adopted by 'Abduh, Quṭb and Maududi. Professor Idris's analysis, which finds support in Ibn. Taymiyyah, is sound yet inconclusive in that it consists of an interpretation that may or may not be preferable to its existing alternative. The author argues that *khalīfah* which occurs in the Qur'ān (2:30), "would be Adam in particular but also all generations of mankind" (p. 102). He then poses three meanings for *khalīfah* which he subsequently eliminates as being unacceptable. But what the learned author does not pose is a general meaning for *khalīfah* in the sense of it being an expression of God's trust in man, to select man as ruler in the earth and as carrier of *amānah al-ḥukm* in order to implement the *Sharī'ah* and establish justice. The author has focussed on a specific text and has not taken the meaning of *khalīfah* and *khilāfah* beyond the confines of the passage which he has analysed. If we look at the Qur'ānic usage of these words and their derivatives, which occur on numerous occasions in the text, we can hardly disassociate a certain sense of trust, dignity and honour being attached to the successorship of *khalīfah*. There seems to be no question of Adam and his progeny being appointed

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khalīfah in the earth in preference to angels—as this is the explicit meaning of the passage that is analysed. The doubt is over the precise meaning of the word *khalīfah*. Since we are not certain as to the specific meaning of *khalīfah*, we should not eliminate the general meaning of this concept either, in the sense, that is, of God's affirmation as to the competence of men for a certain responsibility and mission rather than any abrogation of authority as 'deputy of God' for every believer, or even the collectivity of believers. I understand that *khilāfah* is a general, and admittedly as professor Idris points out, "a very vague concept" (p. 109). It is perhaps based on a wider understanding of the Qur'ān which would include such of its references that designate the community of believers as "the best community," or "the mid-most community," a community which is committed to *amr bi'l-ma'rūf wa nahy 'an al-munkar* (commanding good and forbidding evil), for vindicating the truth and establishing justice. The issue is perhaps not one of semantic accuracy of one specific text but of a general reading of the Qur'ān. Despite the current popularity/acceptance of Ibn al-'Arabī's interpretation of *khalīfah*, it seems that no one has actually given it a specific import in the sense of an affirmation of holiness in any particular individual or group. Without wishing to engage into further detail, two concepts, namely general consensus (*ijmā'*) and sovereignty (*siyādah*) might be thought to be of relevance to the currently common concept of *khilāfah*. But when we look into the details, no one has relied on *khilāfah* as the doctrinal basis of either *ijmā'* or of sovereignty; the latter in the sense of identifying the community as the locus of sovereign authority. If there is an argument that maintains such a view, it has an evidential basis of its own. Then it remains to be said that *khilāfah*, in whatever sense we may give it, is of little positivist significance, beyond a theoretical affirmation which is expressive only of a general meaning of man being the rightful executor of *amānah al-ḥukm*.

GOVERNMENT UNDER THE CONSTITUTION

Neither the *Sharī'ah* nor the juristic doctrine of Muslim scholars provides a specific pattern for the constitution of an Islamic state. Since there is no consensus on the essential features of such a state, the matter must, therefore, remain open to initiative and *ijtihād*. In recent decades, statesmen and scholars have been actively engaged in elaborating the basic themes and attributes of an Islamic polity and a pattern may be emerging. Another reason for lack of a model or definitive precedent on the constitution of an Islamic state is the fact that the idea of a written constitution as a supreme law of the state does not find a clear origin in Islam. The Charter of Madinah, also known as the constitution of Madinah, that was enacted after the migration of the Prophet to Madinah may be considered as authority to validate introduction of a written constitution. The question of harmony or otherwise of

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such a document with the principles of Islam is, of course, another matter. It has been suggested that the Companions did not promulgate a written constitution for reasons perhaps that they did not see the need for one.[37] This pattern prevailed and Muslim rulers did not introduce written constitutions nor a bill of rights until the *Tanzimat* reforms of nineteenth century in Turkey, which were marked by the issuance of Imperial decrees on constitutional themes under Sultan Abdul Mejid.

Apart from occasional decrees by the head of state which addressed issues of constitutional law, constitutional matters were often regulated by reference to custom. Customary rules were naturally slow to develop. We also note, as one might expect, a certain degree of resistance to anomalous practices. The founder of the Umayyad dynasty, Mu'āwiyah, for example, was the first to appoint an heir apparent (*walī al-'ahd*) and thereby validate hereditary succession. Notwithstanding initial protest and resistance to this innovation, a precedent was, nevertheless, set which was to become, by the end of the Umayyad period, a customary practice.[38] Hereditary succession has prevailed ever since, although we see a new custom in the making, in twentieth century, of an elected head of state replacing the hereditary pattern. It thus appears that the basic validity of the earlier custom remainded questionable as it departed from the normative precedent of the Rightly-guided Caliphs.

In response to a question whether constitution-making was at all acceptable to Islam, Rashīd Riḍā issued a *fatwā* in which he answered the question in the affirmative stating that since the cardinal duty of government in Islam was to implement the laws of *Shari'ah,* the idea of a limited government whose powers were defined by the constitution, and a consultative government which was committed to the basic rights of people was acceptable to Islam. If enacting a formal constitution operated as a check on despotism and contributed to the ideals of equality and justice, there was no question of it being repugnant to Islam. If however the constitution contains rules which may be repugnant to the teachings of Islam, then it may be said to be *ultra vires* with regard to its controversial elements only. To substantiate this point, Riḍā further observed that in the history of Islamic jurisprudence one finds numerous instances where the jurists have made errors in their *ijtihād* and in the books they have authored. We ought only to reject the views that are erroneous but not the whole of their endeavour. The error must be corrected at an early opportunity so that the community is protected against deviation.[39] Mahmud Hilmy concurs with this view and comments that there is nothing in the *Sharī'ah* against enacting a written constitution.[40]

COMMITMENT TO EQUALITY

The Prophet and the Rightly-guided Caliphs left behind a legacy which was

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distinctly egalitarian in that they remainded close to the grassroots and avoided the pomp and ceremony that was practiced by Romans and Persians. The Blessed Prophet chose simplicity and preferred to be treated as one among equals. In doing so he only exemplified the teachings of the Qur'ān, which is emphatic on equality. There is no recognition in the holy Book of any grounds of superiority of individuals or nations to one another except for moral rectitute and *taqwā*.[41]

The Blessed Prophet encouraged simplicity in both personal and public affairs. He is on record to have stated, for example: "I am neither a king nor a tyrant. . .";[42] and advised his Companions not to glorify anyone, except Allah. This also included a request by the Prophet that no one should stand in ceremony for him upon arrival. Further to this effect we read in a *ḥadīth*, reported by Abū Dā'ūd, a warning with punishment in the hereafter for "those who love to be glorified by other men". Al-Ghazāli elaborates that the Blessed Prophet used to sit with the Companions like one among them, so much so that a stranger would come and would not know who was who. Then the Companions requested if the Prophet would make himself prominent for purposes of recognition, which was why they built for him a pulpit for his purpose.[43]

In his last sermon at the Farewell Pilgrimage, the Blessed Prophet invited the people to claim any right they might have over him and to retribute for any excess in punishment or use of words by which he might have offended anyone.[44] The Companions especially the Rightly-guided Caliphs followed the Prophet's example, and they, too, are known for simplicity of style, accessability and the fact that they did not expect the people to stand in ceremony for them.[45] It is said that one of caliph 'Umar's statements, which he made upon the conquest of Iraq, "I am not a King but a servant of Allah who is entrusted with an *amānah*", is reminiscent of the Prophet's own acknowledgement to a similar effect.[46] 'Umar refused to indulge in luxury and despite the unprecedented wealth that was being accumulated owing to conquests, he took from the *bayt al-māl* (public treasury) only what he needed for basic necessities for himself and his family. On one of his inspection tours to Syria, 'Umar noted signs of pomp and ceremony on the part of his governor, Mu'āwiyah, whereupon the caliph said: "Is this an empire you are building (*akisrawiyyah yā Mu'āwiyah*)?" Although Mu'āwiyah explained that it was due to the fact of being a neighbour to the Roman Empire that he encountered a certain level of demand for court ceremony, but the caliph was not impressed with the explanation.[47] And lastly we note caliph 'Umar's statement concerning the *bayt al-māl*:

My position *vis-á-vis* the public treasury is like a guardian in charge

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> of the assets of orphans. I may not take anything if I am not in need, but if I am in need I may take what I need for my sustenance.[48]

COMMITMENT TO WELFARE

It is only befitting of the Qur'ānic designation of mercy (*raḥmah*), being the purpose of the Prophetic mission, and of alleviation of hardship (*raf' al-ḥaraj*), being the purpose of the *Sharī'ah*, that the Islamic state should strive towards their realisation. Islam proposes a welfare state and this is known from the overall emphasis in the Qur'ān and the *Sunnah* on helping the helpless, the needy and the poor. The Qur'ān thus speaks unequivocally of a basic right when it stipulates: "And in their wealth there is a right for the one who asks and the destitute (*li'l-Sā'il wa'l-Maḥrūm*)" (51:19). Those who solicit help, and those who are in need but may feel restrained from asking are thus equally entitled to assistance. Similarly, the Qur'ān here speaks of the needy and destitute in general, irrespective of whether they are Muslims or not. The general import of this text is supported in another passage which praises with distinction those who "feed for the love of Allah the indigent, the orphan and the captive" (76:8). This passage was revealed at a time when the captives were all non-Muslims.[49] *Zakāh*, being a pillar of the faith, is prescribed in the Qur'ān with the purpose specially of social assistance.[50] To satisfy the basic needs of those who are in need, Muslims or otherwise, is one of the main areas for which the state revenues, whether from *zakāh* or other taxes and charities, are to be expended. But *zakāh* is a special tax on the rich to be distributed among the poor in order to narrow the gap between them to a tolerable level. It should, therefore, not be confused with other taxes that the state may levy in order to meet its expenditures.[51] The Prophet–cum–head of state has clearly shown that the state is committed to public welfare needs.

It is reported that the Prophet's daughter, who was married to 'Alī, asked her father if she could be provided with a servant for home help. The Prophet declined the request stating:

> By Allah, I shall not grant this while the *Ahl al-Ṣuffah* (a group of indigent Emigrants (*Muhājirūn*) who needed to sleep in the mosque for lack of shelter) suffer from hunger and I do not find enough to feed them.[52]

Other Prophetic *ḥadīth*s that can be quoted in support of the welfare character of the state include:

> He whom God has made an administrator over the affairs of Muslims

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but remains indifferent to their needs and their poverty, God will also be indifferent to his needs and poverty.[53]

He who leaves behind him dependants, they are our responsibility.[54]

The ruler is the supporter of him who has no supporter.[55]

According to a report, the caliph 'Umar exempted an elderly Jew, whom he met in the market-place, from the payment of *jizyah* (poll tax) and then assigned for him an allowance from the public treasury (*bayt al-māl*). The caliph told the Keeper of *bayt al-māl,* "By God it is unfair that we ate from the fruit of his youth and then we let him down in his old age . . . charities are for the poor . . . and this is one of them." In a letter that Khālid ibn al-Walīd sent to the Christians of Hirah in 'Iraq it was stated that the elderly, the disabled and the poor were not required to pay the *jizyah* and if they were in need, they and their dependants would be supported from the *bayt al-māl.*[56]

Caliph 'Umar obviously saw it as his duty to attain distributive justice in the community when he said in a public address that everyone had an equal right in the wealth of the community, that none, not even himself, enjoyed a greater right in it than anyone else, and that if he were to live long enough, he would see to it that even a shephered on Mount Sinai received his share from this wealth.[57] Caliph 'Ali merely reiterated the Qur'ān when he stated that "God has made it obligatory on the rich to provide the poor with what is adequate for them. . ." (cf. 51:19).

Islam's emphasis on distributive justice has found a vivid expression in the views advocated by Abū Dharr al-Ghiffārī, prominent Companion, who thought that Islam did not permit a Muslim to accumulate wealth beyond his needs, and that the surplus wealth should be expended on community welfare and on assisting the poor. Be that as it may, despite their consesus on the welfare commitment of the state, Muslim jurists have also held that acquisition of wealth through lawful means is not against the teachings of Islam.[58]

It is not only the state in Islam but also the individuals who must play there role in community's welfare efforts by giving what they can of their property and service to those who need help. The Qur'ān thus denounces those who refuse to grant a small kindness when they can easily afford it: "Woe to those worshippers who neglect their prayer, who make a show, yet refuse a small kindness" (107:4). 'Abd Allāh ibn Mas'ūd has said concerning this *āyah*: "We used to consider as small kindness. . . the loan of a bucket pot or axe."

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While quoting these Ibn Taymiyyah adds: if there are people who urgently need lodging in the house of a wealthy person, there being no other accommodation available, it is the latter's duty to lodge them. Similarly if they need clothes to keep warm, or utensils for cooking, or tools for drawing water, these should also be provided free of charge. This is the ruling of the Ḥanbalī school but there is a difference of opinion among the *madhāhib* as to whether the owner may or may not charge a fair price for these provisions.[59]

ADMINISTRATIVE CENTRALISM

Authority in the Islamic state is vested in the office of the *Imām*. He is the central figure in the state who is entrusted by the community with general authority (*wilāyah*) by virtue of the contract of representation (*wakālah*) upon his election. The *Imām* then delegates his power to other officers of state, ministers, governors and judges, all of whom represent him in their various capacities.[60] With the exception of judges whose position in respect of enforcing the *Sharī'ah* is parallel to that of the *Imām* himself, all other officials act, in effect, as delegates and assistants to the head of state.[61]

Both political authority and administrative power in the state were modelled after the pattern that was operating during the lifetime of the Prophet and the subsequent period of Rightly-guided Caliphs. They all exercised their authority directly or delegated it to others at their discretion and convenience. The theory of *khilāfah* gave the head of state a wide range of executive powers including an indefinite term of office, unlimited power in fiscal matters and appointment of officials. He was the supreme executive and administrative ruler of the land and yet he was never absolute ruler. The head of state was not only subject to the overriding authority of the *ummah* and *Sharī'ah* but also depended on support from the *'ulamā'* and individual members of community who could act, in their capacity as bearers of divine trust, as barriers to his abuse of power. Under the doctrine of *khilāfah*, government officials exercised delegated authority in the capacity either of leading officers of state who partook in political authority, or *ḥukm*, or in the capacity of assistants. The leading officers were in turn assisted by deputies and assistants who acted as administrative officers but did not partake in *ḥukm*. The prerogative of unrestricted political and executive authority thus belonged exclusively to the head of state, who was vested with it by virtue of the community's pledge of allegiance (*bay'ah*).

In sum, the theory of government did not recognise autonomous individuals and organs in the government hierarchy who did not refer for authorisation to the head of state.[62] It seems that the centralised pattern of

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administration originated in persuasive precedent and custom, which was in turn reflected in the juristic writings of the *'ulamā'*—presumably because it was deemed to bear greater harmony with the integrationist outlook of *tawḥīd* and the territorial unity of the Caliphate. To this effect, al-Sanhuri wrote that unity (*waḥdah*) of government in the territorial domain of the historical *khilāfah* was reflected in a unified central authority (*sulṭah markaziyyah Islāmiyyah*) which was personified by the Caliph.[63] Having stated this al-Sanhuri observed that a centralised state was not an inflexible rule and the historical pattern may be changed in the light of prevailing conditions.[64] There is nothing in the sources of *Sharī'ah* to impose a mandate in regards to the administrative pattern of government. The matter thus remains open to considerations of public interest (*maṣlaḥah*) and consultation (*shūrā*). It is through these methods that necessary adaptation and adjustment in the administrative structure of the state could be devised and implemented.

LIMITED GOVERNMENT

Islam advocates only a limited government whose power is restricted in a variety of ways: With reference to state sovereignty, for instance, we note that the Islamic state is not a sovereign state in the full sense of the word and its powers in respect of legislation are limited by the given terms of the *Sharī'ah*. Politically, this rules out all forms of absolutism, and legally, it paves the way for development of constitutional norms and standards by which it limits the state power. The Islamic state is also a consultative state. For it is bound, as already noted, by the requirement of consultation and due regard for the wishes of the community and the general consensus of *'ulamā'*. The powers of the head of state are also limited by reference to *khilāfah* which means that he acts in the capacity of the trustee of both God Most High and the community of which he is an employee and representative.

The community is entitled in turn to depose the head of state in the event of a serious breach of trust, flagrant deviation from the *Sharī'ah,* or loss of capacity to discharge his duties. Furthermore, the individual in an Islamic state enjoys considerable autonomy as many aspects of his life in the community remain outside the domain of law and government.[65] The jurists have, thus, drawn a distinction between religious and juridical obligations. Only the latter are enforceable through formal objective sanctions, but most of the religious aspects of the individual's life in society are private and non-justicible. Even some of the religious duties like *ṣalāh,* fasting, the *ḥajj* and much of what is classified as recommendable (*mandūb*) and reprehensible (*makrūh*) are not legally enforceable, With reference to the private rights of the individual, there is no authority in the government to waive or grant discretionary changes in these rights, which are generally known as *ḥaqq al-'abd.*

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The head of state and judge do, on the other hand, enjoy limited powers to grant a pardon or repentance in certain cases, or order discretionary punishments for violation of a public right (*ḥaqq Allāh*). We note further that government officials, including the head of state, are subject to the rule of law in precisely the same way as other members of the community. They are accountable for their conduct and enjoy no special immunity or privilege before the court of justice.[66] The *Sharī'ah* does not validate any special tribunals or jurisdictions for government officials nor indeed for any particular group or class of individuals. All are subject to the same law and the general jurisdiction of the *Sharī'ah* court.

And lastly, the *Sharī'ah* sets limit to the authority of government regarding taxation in at least five ways. (1) That tax must be just and proportionate to the ability of the taxpayer; (2) it must apply to all without discrimination or favour; (3) taxation must aim at the minimum of what is deemed necessary; (4) the well-being of the taxpayer must be observed in determining the quantity and method of collection; and (5) taxation must observe the time limit of one calender year for the yield to materialise.[67] Both Abū Yūsuf and al-Māwardī have emphasised moderation in tax by stating that it must in no case deprive the taxpayer of the necessities of life.[68]

GOVERNMENT BY REPRESENTATION

The Islamic state is not, strictly speaking, a direct government of the people, by the people. It is a government of the *Sharī'ah*. But in a substantial sense, it is a popular government since the *Sharī'ah* approves and validates the will and consensus of the people.[69] The head of state is elected by the community through consultation, nomination, and *bay'ah* (pledge of allegiance). *Bay'ah* is, to all intents and purposes, equivalent to a vote. Hereditary succession, which was developed under the Umayyads, is anomalous and contrary to the precedent of the Rightly-guided Caliphs.

The head of state is only one among the entire community of equals and he rules by virtue of the trust the community has reposed in him. This popular vicegerency forms the basis of democracy in an Islamic state, and it means that government can be formed only with the consent of the people and remains in office only as long as it continues to enjoy their confidence.[70]

The Islamic state has features in common with democracy and it is, in many ways, committed to the democratic ideals of justice, equality and the basic liberties of the individual. Separation of powers which is a pillar of Western democracy is also upheld in the Islamic state. To begin with, legislative authority through the modality of *ijmā'* is a prerogative of the

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ummah and their scholars, not of the head of state. The latter must implement the rulings of *ijmā'* and he is bound by it himself.[71] The state is also duty-bound, as noted earlier, to conduct its affairs through consultation with the community. The decisions of the consultative assembly of the state are binding on the head of state, according to one view, and recommendable (*mandūb*) for him to implement them acording to another.[72]

The judiciary is also independent in the sense that it does not adjudicate in accordance with the wishes or dictates of the head of state but in accordance with the *Sharī'ah*. The head of state and the judge are both under the same duty in this regard and the judge needs no authorisation from any superior authority in the implementation of *Sharī'ah*. The office of the head of state is basically executive in character which is designed basically to regulate and to administer rather than legislate and originate.[73]

The main difference between an Islamic state and democracy lies in the ultimate or sovereign authority which inheres in the will of the people. Although, the people remain the main sources of authority in an Islamic polity, the basic structure of values in Muslim society is determined by reference to divine revelation. But within that framework, the community is the locus of considerable authority. It is the *ummah,* as stated earlier, whose authority the government represents. The government is accountable to it and the *ummah* is entitled to depose a leader who is in serious violation of the terms of his office.

Despite allegations that Islam does not recognise majority rule in the way it is recognised in the West, there is evidence to show the weakness of such a claim. The majority ruling, often referred to as the *jumhūr,* has ubiquitous recognition in the works of Muslim jurists, who often refer to the rules of *fiqh* as being the ruling of the *jumhūr.* We also note here al-Māwardi's illustration of the application of majority rule in the selection of the *Imām* in *ṣalāh* where he states: "It is the right of the congregation (*ahl al-masjid*) to elect the *imām.* But if they disagree among themselves the choice of the majority prevails."[74] Consensus of opinion (*ijmā'*) is normally concluded by unanimous agreement of the community, or its scholars and *'ulamā',* who act in their capacity as representatives of the *ummah.* In the absence of unanimity, however the majority ruling still constitutes a proof (*wa'l-kathrah ḥujjah*) next to *ijmā'.* It is even suggested that most of what we know in the name of *ijmā'* consists in fact of majority opinion.

Furthermore, the *Sunnah* of the Prophet is replete with emphasis on adherence to the *jamā'ah* (lit. multitude, majority) which is another word for majority rule. Although the people are entitled to exercise their personal liberties, the *Sunnah*, nevertheless, takes a very serious stance on disloyalty

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and dissension to the *jamā'ah*.[75] This outlook is reflected in the juristic views of the *fuqahā'*, the legal maxims of *fiqh* (*qawā'id kulliyyah al-fiqhiyyah*) and legal doctrines such as *maṣlaḥah* (considerations of public interest),[76] *siyāsah shar'iyyah*[77] and so forth which clearly favour and vindicate the majority interest often in preference to the private interest of individuals. In this sense, the *Sharī'ah* as a whole, as well as the juris corpus of *fiqh*, may rightly be characterised as pro-majority, pro-*ummah* and pro-*jamā'ah*. The government and the *'ulamā'* are under duty to act in pursuit of the public interest. In the event of a conflict arising between private and public interests, the latter would normally prevail. And, lastly, the constitutional theory of *khilāfah* is clear on the point that the head of state is elected on the basis of majority vote. In the event of more then one candidate for leadership, the candidate who has been given *bay'ah* by the majority becomes the *Imām*.[78]

THEOCRACY OR NOMOCRACY

Some observers have commented that Islamic state is a theocracy. The evidence we have reviewed, however, suggests that Islam does not advocate theocracy. If theocracy is understand to mean government by religious leaders who command holiness and spiritual authority, such as that of the Pope in the Midle Ages, then this is definitely not the case in Islam. In a theocracy, the leaders claim to represent God's authority and will, including such powers as the pardoning of sins. Islam does not propose such a government, nor does it vest any particular group of people, be it the *'ulamā'* or religious leaders, with monopoly over power. The Islamic government acquires its authority from the people and it is bound by their mandate.[79] The head of state, in his capacity as representative (*wakīl*) of the community, is elected through popular vote, or general *bay'ah*. He represents and exercises the authority of the people and has no claim to holiness. The *ummah* is also entitled to depose the head of state when the circumstances so require. The head of state has no authority to issue a verdict, or *fatwā*, in religious matters. This is the prerogative of the learned, namely the *mujtahidūn*. Unless the head of state is a *mujtahid*, which he ought to be, he has no authority to issue *fatwā* by virtue only of being head of state. An historical incident that can be cited in this context is when the Caliph Ma'mūn exceeded the limits of his authority by imposing the theological view of the Mu'tazilah on the people, he was met with resistance from Imam Ibn Ḥanbal and many others.[80] The government is bound also by the general consensus or *ijmā'* of the community. Hence the claim that Islam is a theocracy is substantially unjustified. It would be more accurate to say that Islamic government is a government of the people (*ḥukūmah sha'biyyah*) with the proviso that the popular will must not conflict with the basic principles of divine revelations.[81] To

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Sayyid Qutb, the basic requirement of the Islamicity of a state is its commitment to enforce the *Sharī'ah*. The form that the state might take, whether or not it calls itself an Islamic state, and whether it is led by religious leaders, (*'ulamā'*) are all immaterial.[82] This being the case, the Islamic state may be rightly charaterised as a nomocracy, in which the *Sharī'ah* is supreme, with the understanding perhaps, as al-Ris points out, that the *Sharī'ah* is not all textually determined. The *Sharī'ah* permits new legislation through *ijtihād*. The *nuṣūṣ* of *Sharī'ah* are limited and do not provide for all eventualities. The *Sharī'ah* also contains, as earlier stated, general guidelines which can be used as a basis of adaptability and change in the rules of *fiqh*, or indeed of introducing new legislation that are deemed to promote public welfare and *maṣlaḥah*.[83]

To identify ultimate sovereignty in Allah or to identify Him as the origin and source of vicegereney (*khilāfah*) should not necessarily lead us to the conclusion that Islam proposes a theocratic government or a clerical order in the state. Islam does not have either a church or a clerical order in the way that is found in other major religions. Islamic political leadership is civilian by all of its attributes. The essence of *tawhīd* as a working idea, according to Muhammad Iqbal is equality, solidarity and freedom. The state, from the Islamic standpoint, is an endeavour to transform these ideals into reality. It is in this sense alone that Islam is a theocracy, not in the sense that it is headed by a representative of God on earth. The state according to Islam is only an effort to realise the spiritual in a human organisation. But in this sense, Iqbal goes on to add, "all state, not based on mere domination and aiming at the realization of ideal principles, is theocratic".[84] The state is undoubtedly required to observe and protect the values and principles of Islam. A state may be committed to these values without necessarily becoming a theocracy. Al-Turabi representated the prevailing view among Muslim scholars when he tersely stated: "It should be clearly understood that an Islamic state is not a theocracy."[85] Turabi adds that Islamic state is not a government of the *'ulamā'*, nor is it a government by males only. Women played a considerable role in public life during the Prophetic era and they took part in the election of the third caliph, 'Uthmān. Only after that period were women denied their rightful place in public life, but this was history departing from normative principle.[86]

CONCLUSION

There seems to be general agreement that the Islamic identity of a state is to be judged by its commitment to the enforcement of the *Sharī'ah*. Often the word *fiqh* and *Sharī'ah* are used for the same purpose but the two differ in that *fiqh* consists largely of juristic opinion and *ijtihād* and does not

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command the same level of authority as the *Sharī'ah*. The *Sharī'ah* is not altogether a static set of commands and prohibitions, but consists of principles and doctrines which are dynamic, broad and comprehensive. The Qur'ān is emphatic, for example, on the implementation of justice, both retributive and distributive, but it does not specify the details, manner and procedures by which it can be achieved. The Qur'ān and *Sunnah* also emphasise alleviation of hardship to the people (*raf' al-ḥaraj*) as one of the basic objectives of legislation (*tashrī'*). Other major themes and principles of *Sharī'ah* include commitment to the *maṣāliḥ*, or benefits, of the people. The jurists have specified the broad outline of the *maṣāliḥ* into five, namely life, faith, intellect, property and lineage. All measures, whether legislative, judicial or executive, that are aimed at the protection and advancement of these values are an extension of the *Sharī'ah* and partake in its objectives. The *Sunnah* of the Prophet validates *ijtihād* which is designed to extend the rules, philosophy and objectives of *Sharī'ah* to their logical conclusions and also to facilitate a closer rapport between law and social reality. A broad, comprehensive and correct understanding of the *Sharī'ah* would always favour justice, compassion, a robust commitment to truth, to equality, to tolerance, and to realisation of the legitimate interests of people. Any state that is committed to these values and to the basic rights of the people and also facilitates an effective consultative machinary which ensures participation and *shūrā*, and is committed to protecting the faith and dogma of Islam against heresy, corruption and misguidance is bound to be Islamic regardless of the name by which it is known or the form in which it operates.

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16. 'Abd al-Malik ibn 'Abd Allāh al-Jawaynī, *al-Irshād ila Qawāṭi' al-Adillah fi Uṣūl al-I'tiqād*, ed. M. Yūsuf Musa (Cairo: Maktabah al-Khanji, 1369/1950), p. 425.
17. Abū Muhammad 'Ali Ibn Hazm al-Andalusī, *al-Fiṣal Fi'l-Milal Wa'l-Ahwā' Wa'l-Niḥal*, 2nd edn. (Beirut: Dār al-Ma'rifah, 1/395/1975), 88.
18. Cf. 'Atiyah, *al-Nazariyyah al-'Ammah*, p. 71; Sa'di Abū Habīb, *Darāsah fi Minhāj al-Islām al-Siyasi* (Beirut, Mu'assasah al-Risālah, 1406/1958), pp. 526ff.
19. Ahmed, "Umma", 50.
20. Ibid.
21. 'Abd al-Razzaq al-Sanhūri, *Fiqh al-Khilāfah wa Tatawwuruhā*, Arabic translation and commentary by Nadhah al-Sanhuri and Tawfiq al-Shawi (Cairo: al-Hay'ah al-Misriyyah al-'Amah li'l-Kitab, 1989), pp. 174–75.
22. Ibid. pp. 179–80.
23. Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Sh. Muhammad Ashraf, reprint 1982), p. 159.
24. Anwar Ibrahim, "The Ummah", 306, 307.
25. Cf. 'Aṭiyah, *al-Nazariyyah al-'Ammah*, p. 275.
26. Cf. Muhammad Asad, *The Principles of State and Government in Islam* (Berkely, University of California Press, 1961), p. 13; Abu'l A'lā Maudūdī, *The Islamic Law and Constitution*, 5th edn. (Lahore: Islamic Publications, 1975), p. 69.
27. Asad, *Principles*, p. 1.
28. Cf. 'Abd al-Ghani Busyuni 'Abd Allāh, *Nazariyyah al-Dawlah fi'l-Islām* (Beirut; al-Dar al-Jāmi'iyyah, 1986), p. 28.
29. Muhammad Yusuf Musa, *al-Madkhal li-Darāsah al-Fiqh al-Islāmī*, 2nd edn. (Cairo: Dar al-Fikr al-Arabi; 1961), p. 229 ff.
30. Cf. 'Atiyah, *al-Nazariyyah al-'Ammah*; Mahmud Hilmi, *Nizām al-Ḥukm al-Islāmi*, 6th edn. (Cairo: no publisher, 1401/1981), p. 122.
31. Cf. Manzuruddin Ahmed, *al-Nazariyyah al-Siyāsiyyah al-Islāmiyyah fi'l-'Aṣr al-Ḥadīth*, tran. Abd al-Jawad Khalaf (Karachi: Saad Publications, 1409/1988), p. 145.
32. Cf., al-Māwardī, *al-Aḥkām al-Sulṭāniyyah*; Nazih Ayubi, *Political Islam*, p. 15.
33. Hilmy, *Nizām al-Ḥukm*, pp. 60–61; 'Atiyah, *al-Nazariyyah al-'Ammah*, p. 34.
34. Asad, *Principles*, p. 22.
35. Cf. Muhammad Selim el-'Awwa, *Fi'l-Nizām al-Siyāsī al-Islām*, 6th edn. (Cairo: Al-Maktabah al-Misrl al-Hadith, 1988), p. 126.
36. *Journal of Islamic Studies* 1 (1990), pp. 99–110.
37. Cf. Hilmy, *Nizām al-Ḥukm*, p. 123.
38. Ibid. p. 123.
39. Muhammad Rashīd Riḍā, *Fatāwā Imām Muhammad Rashīd Riḍā*, Comp. Ṣalāh al-Dīn/Munjid and Yusuf Khuri (Beirut: Dār al-Kitāb al-Jadīd, 1390/1970), pp. 805–808.
40. Hilmy, *Nizam al-Ḥukm*, p. 123.
41. Thus we read in the Qur'ān to the effect:

> O mankind! We created you from a male and a female and made you into nations and tribes so that you may know each another (not that you may despise each other). Truly the most honoured of you in the sight of God is the most righteous of you. (49:13)

42. 'Alā al-Dīn 'Ali al-Muttaqī, *Kanz al-'Ummāl fi 'Sunan al-Aqwāl Wa'l-Af'āl*, 5th edn. (Gharībah Ḥayāti, ed., 1981), II, 154.
43. Abu Hamid Muhammad al-Ghazali, *Ihyā' 'Ulūm al-Dīn*, Beirut: Dār al-Ma'rifah, n.d., II. 381.

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44. Ibn Jarīr al-Ṭabarī, *Ta'rīkh al-Rusul wa'l-Mulūk*, ed. M. Abu'l-Faḍl Ibrahim, 2nd edn. (Cairo: Dar al-Ma'rifah 1387/1967), III, 189–90.
45. Cf. Abū Ḥabīb, *Darāsah*, p. 89.
46. Al-Ṭabarī, *Ta'rīkh*, III, 584.
47. Shihāb al-Dīn Ibn Ḥajar al-'Asqalānī, *Fatḥ al-Bāri bi Sharḥ al-Bukhārī* (Cairo: Al-Babi al-Halabi, 1378/1959), VII, 27.
48. Abu 'Ubayd al-Qāsim ibn Sallam, *al-Amwāl*, ed. Muḥammad Khalīl Harās (Cairo: Maktabah al-Kulliyyāt al-Azhariyyah, 1389/1969), I, 234.
49. Yūsuf al-Qaraḍāwī, *Ghayr al-Muslim fi'l-Mujtama' al-Islāmī*, 2nd edn. (Beirut: Mu'assasah al-Risālah, 1404/1983), p. 45.
50. The Qur'ān (9:60).
51. Cf. Umar Chapra, *The Economic System of Islam* (Karachi: The Times Press, 1970), p. 49.
52. Ahmad Ibn Hanbal, *al-Musnad*, ed. Ahmad Muhammad Shakir (Cairo: Dar al-Ma'arif, 1386/1948), II, 33, Ḥadīth no. 596.
53. Abū Dā'ūd al-Sijistānī, *Sunan Abū Dā'ūd* (Cairo: Isa al-Babi al-Halabi, 1959), II, 122.
54. Ibid. p. 124.
55. Ibid. I, 481.
56. For both these reports see Abū Yūsuf Ya'qūb ibn Ibrāhīm, *Kitāb al-Kharāj* (Cairo: Bulaq, H 1302), pp. 126, 144.
57. Muhammad Husayn Haykal, *al-Fārūq 'Umar* (Cairo: Maktabah al-Nahdah al-Misriyyah, 1964), II, 233.
58. For further detail see 'Umar Chapra, "Islamic Welfare State and its Role in the Economy", in Khurshid Ahmad (ed.) *Islamic Perspectives* (London: The Islamic Foundation, 1979), pp. 209 f.
59. Cf. Shaykh al-Islam Taqi al-Din Ibn Taymiyyah, *Public Duties in Islam, the Institution of Hisbah*, Eng. trans. Muhtar Holland, Liecester: The Islamic Foundation, 1982/1402, p. 53; see also Ibn Qayyim al-Jawziyyah, Al-Furuq al-Hukmiyyah fi'l-Siyasah al-Shariyyah, Beirut: Dar al-Kutub al-'Ilmiyyah, n.d. pp. 239–40.
60. Abū Ḥabīb, *Darāsah*, p. 72.
61. For information on the status of judiciary see my article "Appellate Review and Judicial Independence in Islamic Law", *Islamic Studies* 29 (1990), 215–50.
62. Cf. Taqī al-Dīn al-Nabhānī, *Muqaddimah al-Dustūr* (Kuwait: 1964, no publisher), pp. 89–90.
63. Al-Sanhūri, n. 21 at 173.
64. Ibid., p. 179.
65. Cf. Turābi, "The Islamic State", pp. 242 ff.
66. For details see M.H. Kamali, "The limits of Power", 345 ff.
67. Cf. 'Abd al-Wahhāb Khallāf, *al-Siyāsah al-Shar'iyyah*, 2nd edn. (Beirut; Muz'assasah al-Risālah, 1404/1904/1984), pp. 59 ff; 'Umar Chapra, *The Economic System of Islam* (Karachi: University of Karachi Press, 1971), p. 63.
68. Abū Yūsuf Ya'qūb ibn Ibrāhīm, *Kitāb al-Kharāj*, 2nd edn. (Cairo: al-Matba'ah al-Salafiyyah, H 1352), p. 152; al-Māwardī, *al-Aḥkām al-Sulṭāniyyah*, 194.
69. Turābi, "The Islamic State", p. 244.
70. Cf. Fathī 'Uthmān, *al-Fikr al-Qānūni al-Islāmī* (Cairo, Matba'ah Mukhaymar, n.d.), p. 119.
71. Cf. al-Rīs, *al-Nazariyyat al-Siyāsiyyah*, p. 380.
72. Maḥmud 'Abd al-Majīd al-Khālidi, *Quwā'id Niẓām al-Ḥukm fi'l-Islam* (Kuwait: Dar al-Buḥuth al-'Ilmiyyah, 1980), pp. 149 ff.
73. Al-Rīs, *al-Nazariyyat al-Siyāsiyyah*, p. 380.
74. Al-Māwardī, *al-Aḥkām al-Sulṭaniyyah*, p. 98.
75. Al-Rīs, *al-Nazariyyat al-Siyāsiyyah*, p. 360.
76. For details see M.H. Kamali "Have we neglected the *Sharī'ah* Law Doctrine of *Maṣlaḥah*?" *Islamic Studies* 27 (1988), 287–304.
77. For details see my article "Siyāsah Shar'iyyah or the Policies of Islamic Government", *The American Journal of Islamic Social Sciences*, vol. 6 (1989), 59–81.
78. Al-Rīs, *al-Nazariyyat al-Siyāsiyyah*, p. 368.

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79. Sayyid Quṭb, *al-'Adālah al-Ijtimā'i fi'l-Islām*, 2nd edn. (Cairo: 'Isa al-Babi al-Halabi, 1373/1954), p. 98.
80. Cf. Al-Sanhūri, n. 21 at 192.
81. 'Uthmān, *al-Fikr al-Qānūnī*, p. 119.
82. Quṭb, *al-'Adālah*, p. 98.
83. Al-Rīs, *al-Naẓariyyat al-Siyāsiyyah* p. 377.
84. Mohammad Iqbal, *Reconstruction*, pp. 154–55.
85. Turābi, "The Islamic State", p. 243.
86. Ibid.

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